



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Matthew J. Strickler
Secretary of Natural Resources

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Director

Craig R. Nicol
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**Virginia-Carolina Farm Associates, LLC
FOR**

Crittenden Road Mine

VPDES Permit No. VAG84; Registration No. VAG840185

Unpermitted Discharge to Wetlands

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Virginia-Carolina Farm Associates, LLC, regarding the Crittenden Road Mine, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "CSCE" means comprehensive site compliance evaluation.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. **"Director"** means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. **"Discharge"** means the discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
7. **"Discharge of a pollutant"** when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. **"DMR"** means Discharge Monitoring Report.
9. **"Dredging"** means a form of excavation in which material is removed or relocated from beneath surface waters.
10. **"Facility"** means the nonmetallic mineral mine located at 7725 Crittenden Road in Suffolk, Virginia, from which discharges of commingled wastewater (i.e. mine pit dewatering and industrial stormwater) occur.
11. **"Fill"** means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
12. **"Fill Material"** means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
13. **"Notice of Violation" or "NOV"** means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
14. **"Order"** means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
15. **"Permit"** means VPDES General Permit No. VAG84, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. Virginia-Carolina applied for registration under the Permit and was issued Registration No. VAG840185.

16. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
17. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
22. "SWPPP" means stormwater pollution prevention plan.
23. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.

26. "Virginia-Carolina" means Virginia-Carolina Farm Associates, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Virginia-Carolina is a "person" within the meaning of Va. Code § 62.1-44.3.
27. "VPDES" means Virginia Pollutant Discharge Elimination System.
28. "VWPP" means Virginia Water Protection Program.
29. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Virginia-Carolina owns and operates the Facility. The Permit allows Virginia-Carolina to discharge commingled wastewater from Outfall 001 to an unnamed tributary that leads to Campbell Creek and then to the Nansemond River, in strict compliance with the terms and conditions of the Permit.
2. The Nansemond River is located in the James River Basin watershed. Campbell Creek and the Nansemond River are listed in DEQ's 305(b) report as impaired for recreation and shellfishing uses. The causes of impairments are fecal coliform and *Enterococcus* bacteria.
3. Part I.A.1 of the Permit authorizes the discharge of process wastewater and commingled stormwater associated with industrial activity from Outfall 001 in accordance with the effluent limitations and monitoring requirements.
4. In submitting its DMRs, as required by the Permit, Virginia-Carolina has indicated that it exceeded discharge limits contained in Part I.A.1 of the Permit for Total Suspended Solids (TSS) for the April through June 2017 and July through September 2017 reporting periods as follows:

Reporting Period	Parameter	Loading/Concentration	Reported	Legal Requirements
4/1/17 – 6/30/17	TSS	Concentration Average	120.2 MG/L	30 MG/L
4/1/17 – 6/30/17	TSS	Concentration Maximum	120.2 MG/L	60 MG/L
7/1/17 – 9/30/17	TSS	Concentration Average	43.6 MG/L	30 MG/L

*milligrams per liter

5. Virginia-Carolina violated conditions Part I.A.1 of the Permit as noted in paragraph C(4) of this Order.
6. Part III of the Permit requires Virginia Carolina to develop and implement a SWPPP.
7. During the March 30, 2018 inspection, DEQ staff documented compliance deficiencies with respect to the SWPPP requirements of the Permit as follows:
 - a. The SWPPP states that the routine facility inspection frequency is quarterly. The records of routine facility inspections for the third and fourth quarters of 2017 were not available for review upon request.
 - b. The routine facility inspections available for review noted that corrective actions were needed but follow-up information was not provided.
 - c. Records of annual employee training as required by the SWPPP were not available for review upon request for 2016 and 2017.
 - d. The Facility site map contained in the SWPPP did not include all of the items required by the Permit, e.g. not all of the structural controls were shown, stormwater conveyances of check dams and piping were not up to date, and the location of ponds and other ditches had not been updated.
 - e. The 2017 CSCE was not available for review upon request and the 2016 CSCE did not include corrective actions for non-compliance. The 2016 CSCE also was not signed in accordance with Part III.K of the Permit.
8. Part II.F.2 of the Permit states that the permittee shall make the SWPPP, annual CSCE, and other information available to department upon request.
9. Part II.H.2.a.(1) of the Permit states that the site map shall include control measures, locations of materials exposed to precipitation, the type of discharges and locations of all stormwater conveyances.
10. Part III.H.3.d.(4) of the Permit requires that site inspections, best management practices, and visual examination results be documented and maintained on-site with the SWPPP.
11. Part III.H.3.d.(5) of the Permit requires that tracking or follow-up procedures be used to ensure that appropriate actions are taken in response to the inspection.
12. Part III.H.3.e of the Permit states that employee training programs shall inform personnel responsible for implementing activities identified in the SWPPP.
13. Part III.H.4 of the Permit requires that the permittee perform a CSCE no less than once per year.

14. Virginia-Carolina violated conditions Part II.F.2, Part II.H.2.a.(1), Part III.H.3.d.(4), Part III.H.3.d.(5), Part III.H.3.e, and Part III.H.4 of the Permit as noted in paragraph C(7) of this Order.
15. Part I.B.6 of the Permit states that except as authorized, no product, materials, industrial wastes, or other wastes shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to State waters.
16. During the March 30, 2018 inspection, DEQ also observed that sediment from the borrow pit had discharged into wetlands due to failed erosion and sediment control measures.
17. On April 11, 2018, DEQ VWPP staff conducted a follow-up inspection. During this inspection, DEQ observed that a range of approximately 1-8 inches with a small area high point of 18 inches of sediment had discharged onto 0.15 acres of non-tidal forested wetlands and 1-2 inches of sediment had discharged onto 0.18 acres of tidal wetlands.
18. Virginia-Carolina does not have a permit for the discharge of sediment into 0.32 acres of wetlands.
19. Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50(A) states that except in compliance with a VWPP permit, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical, or biological properties of surface waters of the Commonwealth.
20. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
21. 9 VAC 25-31-50 states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
22. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
23. The Department has issued no permits or certificates to Virginia-Carolina other than VPDES Permit No. VAG84 under Reg. No. VAG840185.
24. The Nansemond River and adjoining wetlands are a surface waters located wholly within the Commonwealth and are “state waters” under State Water Control Law.
25. On June 29, 2018 and July 19, 2018, DEQ issued to Virginia Carolina NOV No. W2018-06-T-0005 and NOV No. 1806-000768 for the VPDES and VWPP program violations, respectively.
26. Virginia-Carolina responded to the VPDES NOV on July 9, 2018 by telephone. On July 20, 2018, DEQ met with Virginia-Carolina to discuss the VPDES and VWPP NOV's.

During the July 20, 2018 meeting, Virginia-Carolina provided DEQ with records of employee training for 2018, DMRs for the second and third quarters of 2017, and the second quarter of 2018, routine facility inspections for the second and third quarters of 2017, a CSCE for 2017 (dated April 2, 2018), and an updated SWPPP (dated July 2, 2018).

27. Based on the results of the March 30, 2018 and April 11, 2018 inspections, the July 20, 2018 meeting, and DMRs submitted for the April through June 2017 and July through September 2017 reporting periods, the Board concludes that Virginia-Carolina has violated the Permit, Va. Code §§ 62.1-44.5 and 44.15:20, and 9 VAC 25-31-50 and 25-210-50(A), by discharging commingled wastewater while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(4), C(7), and C(17), above.
28. In order for Virginia-Carolina to complete its return to compliance, DEQ staff and representatives of Virginia-Carolina have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders Virginia-Carolina, and Virginia-Carolina agrees to:

1. Perform the actions described in Appendices A and B of this Order; and
2. Pay a civil charge of \$31,038.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Virginia-Carolina shall include its Federal Employer Identification Number (FEIN) _____ with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Virginia-Carolina shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Virginia-Carolina for good cause shown by Virginia-Carolina, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2018-06-T-0005 dated June 29, 2018 and in NOV No. 1806-000768 dated July 19, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Virginia-Carolina admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Virginia-Carolina consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Virginia-Carolina declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Virginia-Carolina to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Virginia-Carolina shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Virginia-Carolina shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Virginia-Carolina shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when

circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Virginia-Carolina. Nevertheless, Virginia-Carolina agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Virginia-Carolina has completed all of the requirements of the Order;
 - b. Virginia-Carolina petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Virginia-Carolina.

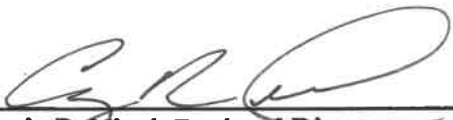
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Virginia-Carolina from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Virginia-Carolina and approved by the Department pursuant to this Order are incorporated into

this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Virginia-Carolina certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Virginia-Carolina to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Virginia-Carolina.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Virginia-Carolina voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7th day of FEBRUARY, 2019.



Craig R. Nicol, Regional Director
Department of Environmental Quality

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Virginia-Carolina Farm Associates, LLC voluntarily agrees to the issuance of this Order.

Date: 12/12/18 By: Bobby Wynn Ms.
(Person) (Title)
Virginia-Carolina Farm Associates, LLC

Commonwealth of Virginia
City/County of Suffolk

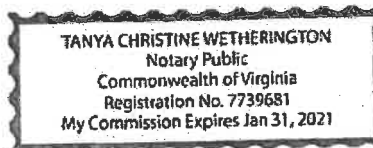
The foregoing document was signed and acknowledged before me this 12 day of
December, 2018, by Bobby Wynn who is
Manager of Virginia-Carolina Farm Associates, LLC, on behalf of the
limited liability company.

Tanya Christine Wetherington
Notary Public

7739681
Registration No.

My commission expires: Jan 31, 2021

Notary seal:



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APPENDIX A VPDES SCHEDULE OF COMPLIANCE

1. Stormwater Pollution Prevention Plan

- a. Within 30 days of the effective date of this Order, Virginia-Carolina shall submit to DEQ for review and approval an updated SWPPP that complies with all requirements set forth in Part III of the Permit, including, but not limited to:
 - i) An updated site map that complies with all requirements set forth in Part III.H.2.a.(1) of the Permit, including, but not limited to structural controls, stormwater conveyances of check dams and piping, and locations of ponds and other ditches;
 - ii) A certified CSCE, in accordance with Part III.H.4 of the Permit, and signed in accordance with Part III.K of the Permit.

2. Routine facility inspections

- a. Within 30 days of the effective date of this Order, Virginia-Carolina shall submit to DEQ for review and approval a routine facility inspection report that includes follow-up information on corrective actions needed, as required by Part III.H.3.d.(5) of the Permit.
- b. By January 10, 2019 and April 10, 2019, submit to DEQ for review the routine facility inspection reports for the 4th quarter of 2018 and the 1st quarter of 2019. Submittals of routine facility inspection reports shall be extended for an additional monitoring period thereafter (i.e. 2nd quarter of 2019 due July 10, 2019) if compliance deficiencies continue to be identified that may result in further enforcement.

3. DEQ Contact

Unless otherwise specified in this Order, Virginia-Carolina shall submit all requirements of Appendix A of this Order to:

VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, VA 23462

APPENDIX B VWPP SCHEDULE OF COMPLIANCE

1. Within 60 days of the effective date of this Order, Virginia-Carolina shall submit an approvable Corrective Action Plan (CAP) for the restoration of state waters at the Facility that have been impacted without a Permit that meets the requirements of 9 VAC 25-210-116. The CAP must be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters in accordance with 9 VAC 25-210-116. Virginia-Carolina shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.
2. Upon DEQ approval of the CAP, Virginia-Carolina shall begin implementation of the Corrective Action Plan in accordance with the schedule contained therein. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. Virginia-Carolina shall complete the CAP in accordance with its terms.
 - a. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then Virginia-Carolina shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, Virginia-Carolina shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by Virginia-Carolina in accordance with the schedule set forth in the alternative CAP.
 - b. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then Virginia-Carolina shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. Virginia-Carolina shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Virginia-Carolina shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.
3. If required in accordance with the DEQ approved CAP prepared under Paragraph 2b of this Appendix, B, not later than January 1, 2022, Virginia-Carolina shall submit proof of purchase of the specified wetland credits from a DEQ-approved mitigation bank or in-lieu fee fund that is authorized and approved by DEQ to sell credits in the area in which

the impacts occurred and has credits available (as released by DEQ) to achieve no-net-loss of existing wetland acreage and no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116.

4. Unless otherwise specified in this Order, Virginia-Carolina shall submit all requirements of Appendix B of this Order to:

VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, VA 23462